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November 1, 2000

REC'D TO  
REGULATORY AUTH.  
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EXECUTIVE SECRETARY

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Dear Mr. Waddell:

Re: Petition of Ben Lomand Communications, Inc.  
Requesting Authority to Issue and Sell  
Additional Common Stock to be Used Primarily  
For CLEC Facilities Based Operations  
Docket No. 00-00680  
Responses and Analysis  
For Ben Lomand Communications, Inc.  
Questions of October 24, 2000

Enclosed are the original and 13 copies of the Responses and Analysis  
to Questions of October 24, 2000, in regard to the petition of Ben Lomand  
Communications, Inc. for approval to issue and sell up to an additional \$1,000,000 in  
common stock of Ben Lomand Communications, Inc. Please file this on behalf of Ben  
Lomand Communications, Inc.

Very truly yours,

*James W. Dempster*  
James W. Dempster

JWD:bw

Enclosures

c: Levoy Knowles, Exec. V.P., BLC  
Judy Kelsey, Operations Manager, BLC

Express Mail

POSTED  
11-2-00

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BEFORE THE TENNESSEE REGULATORY AUTHORITY  
SITTING IN NASHVILLE, TENNESSEE

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DOCKET NO. 00-00680

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RECEIVED

IN RE:

PETITION OF BEN LOMAND  
COMMUNICATIONS, INC. REQUESTING  
AUTHORITY TO ISSUE AND SELL  
ADDITIONAL COMMON STOCK TO BE  
USED PRIMARILY FOR CLEC  
FACILITIES BASED OPERATIONS

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NO INTERVENORS

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RESPONSES AND ANALYSIS  
FOR BEN LOMAND COMMUNICATIONS, INC.  
QUESTIONS OF OCTOBER 24, 2000

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## BRIEF HISTORY

On or about the 27th day of July, 2000, a petition was mailed by Ben Lomand Communications, Inc. to the Tennessee Regulatory Authority seeking permission to sell up to an additional \$1,000,000 of common stock to the parent company, Ben Lomand Rural Telephone Cooperative, Inc. At conferences in August and September and by letter from the Executive Secretary of the Tennessee Regulatory Authority, several questions were submitted to James W. Dempster, General Counsel for Ben Lomand Communications, Inc., for answer.

Timely responses were made to each and every question submitted.

On October 24, 2000, at the Tennessee Regulatory Authority Conference, Case No. 00-00680, Ben Lomand Communications, Inc.'s petition requesting authority to issue and sell additional common stock was called up to be considered by the members of the Tennessee Regulatory Authority whereupon Director Greer, before any action was taken, read a statement, a copy of which was later furnished to the Petitioner. In that statement Director Greer said:

. . . I would like the Petitioner to file a written response to the following questions which serve to clarify the 3rd question asked in the previous data request:

1. Does TCA 65-5-208 apply to transactions between Ben Lomand Communications and its parent, the Cooperative?
2. Assuming TCA 65-5-208 does apply, does the proposed transaction violate this section?

If my colleagues agree to the further investigation I feel is necessary, I move to defer the petition until the next Authority Conference or a time that is more convenient for the Petitioner.

Whereupon the request of Director Greer to defer was honored.

## ANSWERS

It is the opinion of Ben Lomand Communications, Inc., the Petitioner, that:

1. Tennessee Code Annotated 65-5-208 does not apply to transactions between Ben Lomand Communications, Inc. and its parent, the Cooperative (Ben Lomand Rural Telephone Cooperative, Inc.). The basis of this opinion will be given in the **ANALYSIS** which follows.

2. Ben Lomand Communications, Inc. is confident in its opinion that TCA 65-5-208 does not apply to transactions between the Petitioner and its parent, as set out in answer 1. above; but to answer the question, "Assuming that TCA 65-5-208 does apply, does the proposed transaction violate this section?" the Petitioner's answer is, No it would not. This answer will also be covered in the **ANALYSIS**.

## ANALYSIS

Section 65-5-208 is specific to the type of entity to which it applies, namely, "(a) Services of incumbent local exchange telephone companies . . ." and "(c) Effective January 1, 1996, an incumbent local exchange telephone company shall adhere to a price floor for its competitive services subject to such determination as the authority shall make pursuant to § 65-5-207."

Tennessee Code Annotated 65-4-101 (d) is clear as to what the Legislature meant by an incumbent local exchange telephone company, and I quote:

(d) "Incumbent local exchange telephone company" means a public utility offering and providing basic local exchange telephone service as defined by § 65-5-208 pursuant to tariffs approved by the commission prior to June 6, 1995.

Tennessee Code Annotated 65-5-208(1) states as follows:

(1) "Basic local exchange telephone services" are telecommunications services which are comprised of an access line, dial tone, touch-tone and

usage provided to the premises for the provision of two-way switched voice or data transmission over voice grade facilities of residential customers or business customers within a local calling area, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on June 6, 1995, or other services required by state or federal statute. These services shall, at a minimum, be provided at the same level of quality as is being provided on June 6, 1995. Rates for these services shall include both recurring and nonrecurring charges.

It is clear, as shown by the Authority's records in Docket No. 98-00600 and 00-00680, that Ben Lomand Communications, Inc. does not and could not be classified as an incumbent local exchange carrier as it was not performing any of the basic local exchange telephone services enumerated in TCA 65-5-208(1) above on June 6, 1995, which is the key date

Now referring to the parent company, Ben Lomand Rural Telephone Cooperative, Inc., Is it an INCUMBENT LOCAL EXCHANGE TELEPHONE COMPANY as defined by 65-4-101 (d)? The answer is NO. The very first essential element set out in the definition (TCA 65-4-101 [d]) says:

"Incumbent local exchange telephone company" means a public utility offering and providing basic local exchange telephone service as defined by § 65-5-208 pursuant to tariffs approved by the commission prior to June 6, 1995.

A cooperative is not included under the definition of "public utility" as set out in TCA 65-4-101.

Tennessee Code Annotated 65-4-101. Definitions. -- (a) sets out what a public utility includes, then it goes on to provide:

"Public utility" as herein defined shall not be construed to include the following (hereinafter called nonutilities): . . .

(5) Any cooperative organization, association or corporation not organized or doing business for profit;

Responding to the second question:

2. Assuming TCA 65-5-208 does apply, does the proposed transaction violate this section?

We respectfully contend that TCA 65-5-208 does not apply as set out in the response and answer to No. 1 above, but if it did, our answer would be No.

The words "proposed transaction" as contained in question 2., put simply, is the sale of up to \$1,000,000 in stock by BLC, a competing telecommunications service provider (defined in TCA 65-4-101 [e]), to its parent company, a corporation, or another type entity (in this instance is a nonprofit telephone cooperative operating under TCA 65-29-101 et seq.) which does not violate TCA 65-5-208.

In our limited research, which includes only the state of Tennessee, we have found no statute or case law which holds that the sale of stock from parent to subsidiary or from subsidiary to parent is per se a violation of law and certainly does not violate any provision of TCA 65-5-208.

The general rule of law is that a corporation has the power to sell stock to other corporations. The general rule also follows that a corporation has implied power to purchase the stock of other corporations for investment purposes. Most of the state corporation laws grant corporations organized thereunder the right to own and hold stock in other corporations.

It is the thought of this respondent that the verbiage in TCA 65-5-208 (c) that may be giving the Authority and staff some concern is as follows:

When shown to be in the public interest, the authority shall exempt a service or group of services provided by an incumbent local exchange telephone company from the requirement of the price floor. The authority shall, as appropriate, also adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive service or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.

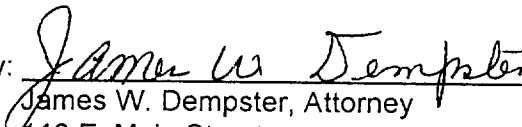
It is the opinion of this respondent that this provision is applicable only to incumbent local exchange telephone companies that were in existence on June 6, 1995, and who apply for price regulation under Section 65-5-209. Neither the Petitioner, Ben Lomand Communications, Inc., nor the parent are classified as incumbent local

exchange carriers under Tennessee Code Annotated 65-4-101 or 65-5-201 et seq., nor are they price cap companies.

Now having responded to the two questions propounded by Director Greer at the October 24 conference, the Petitioner does respectfully request that the petition, Case No. 00-00680, be placed on the docket for further consideration.

Respectfully submitted,

BEN LOMAND COMMUNICATIONS, INC.

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